

**HAWAII ADMINISTRATIVE RULES**

**TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

**SUBTITLE 4**

**ENFORCEMENT DIVISION**

**CHAPTER 20**

**WAGE AND HOUR**

Subchapter 1    The Administration and Enforcement of the Wage  
and Hour Law

- §12-20-1    Definitions
- §12-20-2    Bona fide executive capacity
- §12-20-3    Bona fide administrative capacity
- §12-20-4    Bona-fide supervisory capacity
- §12-20-5    Bona fide professional capacity
- §12-20-6    Outside salesman capacity
- §12-20-7    Outside collector
- §12-20-8    Record keeping requirements
- §12-20-9    Reasonable cost of board, lodging, or other facilities
- §12-20-10    Reduction of wages
- §12-20-11    Payment of wages to tipped employees
- §12-20-12    Record keeping requirements; tipped employees
- §12-20-13    Computation of time
- §§12-20-14 to 12-20-50    (Reserved)

SubChapter 2    Employment of Student-Learners

- §12-20-51    Definitions
- §12-20-52    Application for certificate
- §12-20-53    Issuance of certificate
- §12-20-54    Revocation of certificate
- §12-20-55    Reconsideration
- §§12-20-56 to 12-20-60    (Reserved)

Subchapter 3    Employment of Handicapped Clients in Sheltered  
Workshops

- §12-20-61    Definitions
- §12-20-62    Application for certificate
- §12-20-63    Factors for consideration
- §12-20-64    Issuance of certificate
- §12-20-65    Terms of certificate

§12-20-66 Renewal of certificate  
§12-20-67 Non-handicapped clients in sheltered workshops  
§12-20-68 Record keeping requirements  
§12-20-69 Revocation and cancellation  
§12-20-70 Reconsideration  
§12-20-71 Submission of information; investigation; hearings  
§§12-20-72 to 12-20-80 (Reserved)

Subchapter 4 Employment of Student-Workers

§12-20-81 Definitions  
§12-20-82 Application for certificate  
§12-20-83 Issuance of certificate  
§12-20-84 Record keeping requirements  
§12-20-85 Revocation and cancellation  
§12-20-86 Reconsideration  
§§12-20-87 to 12-20-90 (Reserved)

Subchapter 5 Employment of Handicapped Persons

12-20-91 Definitions  
12-20-92 Application for certificate  
12-20-93 Issuance of certificate  
12-20-94 Renewal of certificate  
12-20-95 Record-keeping requirements  
12-20-96 Revocation and cancellation  
12-20-97 Reconsideration  
12-20-98 to 12-20-100 (Reserved)

Subchapter 6 Employment of Paroled Wards of the Hawaii Youth  
Correctional Facility

12-20-101 Definitions  
12-20-102 Application for certificate  
12-20-103 Issuance of certificate  
12-20-104 Renewal of certificate  
12-20-105 Record keeping requirements  
12-20-106 Revocation and cancellation  
12-20-107 Reconsideration

**SUBCHAPTER 1**

**THE ADMINISTRATION AND ENFORCEMENT OF THE  
WAGE AND HOUR LAW**

**Historical Note:** Subchapter 1, chapter 20 of title 12 is based substantially upon "Rule XIII, Relating to the Administration and Enforcement of the Hawaii Wage and Hour Law" of the Department of

Labor and Industrial Relations. [Eff. 11/1/51; am 10/15/62; am 3/1/66; am 1/1/68; am 1/1/70; am 7/19/75; R, 10/2/81]

**§12-20-1 Definitions.** As used in this chapter:

"Department" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Director" shall be as defined in section 367-1, Hawaii Revised Statutes.

"Employ" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Employer" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Tip" means a sum of money determined solely by a customer and given in recognition of service performed by an employee who retains it as a gift or gratuity. It may be paid in cash, bank check, or other negotiable instrument payable at par as well as amounts transferred by employer to employee by direction of the credit customer who designates amounts to be added to the customer's bill as tips. Compulsory or negotiated service charges and special gifts in forms other than described above are not counted as tips.

"Tip credit" is the amount by which the wage paid a tipped employee is deemed to be increased because of tips received by the employee.

"Tipped employee" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Wage" shall be as defined in section 387-1, Hawaii Revised Statutes.

"Week" shall be as defined in 387-1, Hawaii Revised Statutes.

"Workweek" shall be as defined in section 387-1, Hawaii Revised Statutes. [Eff. 10/2/81] (Auth: HRS §387-11) (Imp: HRS §387-11)

**§12-20-2 Bona fide executive capacity.** The term "individual employed...in a bona fide executive ... capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (3) Who customarily and regularly directs the work of two or more employees;
- (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and

firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

- (5) Who customarily and regularly exercises discretionary powers. [Eff. 10/2/81; am 8/8/88 (Auth: HRS §387-11) (Imp: HRS §387-1)]

**§12-20-3 Bona fide administrative capacity.** The term "individual employed...in a bona fide ... administrative...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); and
- (2) Whose primary duty consists of the performance of office or nonmanual field work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment. The individual may be a person: (A) Who regularly and directly assists a proprietor or an individual employed in a bona fide executive or administrative capacity (as the terms are defined in this subchapter); or  
(B) Who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or  
(C) Who executes under only general supervision special assignments or tasks. [Eff. 10/2/81; am 8/8/88] (Auth: HRS §387-11) (Imp: HRS §397-1)]

**§12-20-4 Bona fide supervisory capacity.** The term "individual employed...in a bona fide supervisory...capacity" means any individual:

- (1) Who is compensated on a fixed salary of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities);
- (2) Whose primary duty consists of the supervision or direction of other employees; and
- (3) Who customarily and regularly directs the work of at least five employees in the enterprise in which the individual is employed. [Eff. 10/2/81; am 8/8/88] (Auth: HRS §387-11) (Imp: HRS §387-1)]

**§12-20-5 Bona fide professional capacity.** The term "individual employed...in a bona fide ... professional capacity" means any individual:

- (1) Who is compensated on a fixed salary or fixed fee of not less than \$210 per week (exclusive of the reasonable cost to the employer of board, lodging, or other facilities); provided that the salary requirement shall not apply in the case of an individual:
    - (A) Who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof; or
    - (B) Who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or residency program pursuant to the practice of medicine or any of its branches; or
    - (C) Who is employed and engaged as a teacher as provided in paragraph (2)(C);
  - (2) Whose primary duty consists of the performance of:
    - (A) Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
    - (B) Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the individual; or
    - (C) Teaching, tutoring, instructing, or lecturing and who is employed and engaged in this activity as a teacher certified or recognized in the school system or educational establishment or institution by which the person is employed;
  - (3) Whose work requires the consistent exercise of discretion and judgment in its performance; and
  - (4) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.
- [Eff. 10/2/81; am 8/8/88] (Auth: HRS §387-11) (Imp: HRS

§387-1)

**§12-20-6 Outside salesman capacity.** The term "individual employed... in the capacity of outside salesman" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
  - (A) Making sales; or
  - (B) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B) do not exceed forty per cent of the hours worked in the workweek by non-exempt employees of the employer; provided that the hours of work do not include hours of work of a nature other than sales or solicitations which are in excess of five per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside sales or solicitations. The term "sales" shall include any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition with respect to tangible and intangible property. (Eff. 10/2/81] (Auth: HRS §387-11) (Imp: HRS §387-1)

**§12-20-7 Outside collector.** The term. "individual employed ... as an outside collector" means any individual:

- (1) Who is employed for the purpose of, and who is customarily and regularly engaged away from the employer's place or places of business in:
  - (A) Collecting money for goods or services previously or presently furnished by the employer; or
  - (B) Collecting money for an account placed in the hands of the employer for collection; and
- (2) Whose hours of work of a nature other than that described in paragraphs (1)(A) and (1)(B).do not exceed twenty per cent of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside collections. [Eff.10/2/81] (Auth: HRS §387-11) (Imp: HRS §387-1)

**§12-20-8 Record keeping requirements.** (a) Every employer shall maintain and keep in or about the premises where any employee is employed, records in English containing the following information on

each employee to whom sections 387-2'and 387-3, Hawaii Revised Statutes, apply:

- (1) Name in full, social security number, and any identifying symbol or number used in place of or in addition to a name on any record kept by the employer relating to the employee;
- (2) Home address;
- (3) Date of birth, if under nineteen;
- (4) Occupation in which employed;
- (5) Rate of pay and length of pay period;
- (6) Hours worked each workday and total hours worked each workweek;
- (7) Total daily or weekly straight-time wages;
- (8) Total weekly overtime wages;
- (9) The amount and purpose of additions to or deductions from wages paid each pay period;
- (10) Total wages paid each pay period, date of payment, and pay period covered;
- (11) Date of hire; and
- (12) Date of termination.

(b) These records shall be preserved by the employer for at least six years. [Eff. 10/2/81] (Auth: HRS §§387-6, 387-11) (Imp: HRS §387-6)

**§12-20-9 Reasonable cost of board, lodging, or other facilities.** (a) The reasonable cost to the employer of furnishing an employee with board, lodging, or other facilities is the actual cost of providing the board, lodging, or other facilities and shall not include a profit to the employer or to any affiliated person.

(b) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount Of capital invested by the employer shall be calculated in accordance with generally accepted accounting principles. The term "depreciation" shall include obsolescence.

(c) The cost of furnishing facilities which are primarily for the benefit or convenience of the employer shall not be included as wages. These facilities may include, but are not limited to:

- (1) Tools of the trade and other materials and services incidental to carrying on the employers business; and
- (2) Uniforms and their laundering, where the nature of the business requires the employee to wear a uniform. [Eff. 10/2/81] (Auth: HRS §387-11) (Imp. HRS §§387-1 to'387-3)

**§12-20-10 Reduction of wages.** No employer shall reduce a wage paid to an employee which is in excess of the minimum wage under chapter 387, Hawaii Revised Statutes, for the purpose of, evading the overtime provisions of section 387-3,.Hawaii Revised Statutes. [Eff.

10/2/81] (Auth: HRS §387-11) (Imp: HRS §§387-3, 387-11)

**§12-20-11 Payment of wages to tipped employees.** (a) Where employees practice tip-splitting, each employee shall be considered tipped only to the extent of the proportionate share received and retained by each. Similarly, where an employer in furtherance of a tip-pooling arrangement redistributes the tips to the employees upon some basis mutually agreed by the employees themselves, only the amounts actually received and retained by each individual shall be considered tips.

(b) Where an employee is employed in two or more different occupations for the same employer, tip credit may be taken only for hours worked in the occupation in which the employee customarily and regularly receives more than \$20 a month in tips.

(c) The employer shall notify all employees in writing at the time of hire if tip credit is to be used. The employer's policy on tip credit may be changed if the change is intended to be permanent and not designed to evade the requirements of the law. Notification of changes shall be given to the employees in writing or through a posted notice prior to the commencement of the pay period.

(d) The regular rate of a tipped employee who works overtime shall be determined as provided in section 387-3, Hawaii Revised Statutes. Tips received in excess of the tip credit shall not be included in the regular rate.

(e) An employee who customarily and regularly receives more than \$20 a month in tips remains a tipped employee even though sickness, vacation, or the like reduces the amount of tips received in a particular month to \$20 or less. The employee must actually receive more than \$20 a month in tips and shall not be considered a tipped employee solely because of employment in an-occupational group which has record of receiving more than \$20 a month in tips. An employee may qualify as a tipped employee in the initial or terminal month of employment provided that tips received in a particular week or weeks of a month is at a rate in excess of \$20 a month. [Eff. 10/2/81] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-3)

**§12-20-12 Record keeping requirements;** tipped employees. Every employer claiming tip credit shall in addition to records required by section 12-20-8, maintain and preserve payroll or other records containing the following information and data with respect to each tipped employee:

- (1) A symbol placed on the pay records identifying each employee whose wage is partially determined by tips;



- (2) Weekly amount of tips received by the employee;
- (3) Amount by which the wages of each tipped employee have been increased because of tips as determined by the employer;
- (4) The amount per hour-which the employer takes as tip credit. This amount shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week;
- (5) Hours worked each workday in any occupation in which the employee does not receive tips, and total weekly straight-time payment made by the employer for these hours; and
- (6) Hours worked each workday in occupations in which the employee receives tips, and total weekly straight-time wages for these hours. [Eff. 10/2/81] (Auth: HRS §387-11) (Imp: HRS §§387-1, 387-2, 387-6)

**§12-20-13 Computation of time.** The time in which any act provided-by this chapter is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this chapter, "holiday" includes any day designated as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff. 10/2/81] (Auth: HRS §387-11) (Imp: HRS §337-9)

**§12-20-14 -to 12-20-50** (Reserved)

## **SUBCHAPTER 2**

### **EMPLOYMENT OF STUDENT-LEARNERS**

**Historical Note:** Subchapter 2, chapter 20 of title 12 is based substantially upon "Rule XVII, Relating to Employment of Student-Learners" of the Department of Labor and Industrial Relations. [Eff. 8/15/55; am 1/1/64; R 10/2/81]

**§12-20-51 Definitions.** As used in this subchapter:

"Bona fide vocational training program" means one authorized and approved for public high schools by the department of education or approved for a private high school by the principal of that school, with provision for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks, or for other limited periods during the year, supplemented by and integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student- learner's course in the high school.

"Student-learner" means a student who is receiving instruction in a public high school or licensed private high school and who is employed on a part-time basis pursuant to a bona fide vocational training program. [Eff 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-52 Application for certificate.** Application for the employment of student-learners under special certificates authorizing employment at wages lower than the minimum wage applicable under section 387-2, Hawaii Revised Statute, shall be made by the employer to the director on forms furnished by the department. The application must be complete and be signed by the employer, student-learner, and appropriate school official, (Eff. 10/2/81] (Auth: HRS §§387-91, 387-11) (Imp: HRS §387-9)

**§12-20-53 Issuance of certificate.** (a) Upon receipt of an application for the employment of a student-learner, the director may issue a special certificate under the following terms and conditions:

- (1) Any training program under which the student-learner will be employed shall be a bona fide vocational training program;
- (2) The special minimum wage shall not be less than seventy-five per cent of the minimum wage under section 387-2, Hawaii Revised Statutes, as amended;
- (3) The special certificate shall be valid for a period not to exceed one school year;
- (4) The special certificate shall have no retroactive effect, but shall operate as 'an exception subsequent to the date of issue only;
- (5) The student-learner shall be at least sixteen years of age;
- (6) The work hours at the subminimum rate combined with the school hours of the student-learner shall not exceed forty hours per week. When school is not in session the number of hours worked at the subminimum rate by the student-learner shall not exceed forty hours per week; and
- (7) There have been no violations of chapter 387, Hawaii Revised Statutes, by the employer which may provide reasonable grounds for the director to conclude that the employer would not comply with the terms of the special certificate.

(b) The special certificate or a notice of the denial thereof shall be mailed to the employer.

(c) The special certificate shall be preserved by the employer and be available for inspection for at least six years after date of issue. (Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-54 Revocation of certificate.** (a) A special certificate may be revoked by the director for cause at any time. Cause shall mean violation of any provision of this subchapter, falsification of any information required by the application, or withdrawal of approval of the employer's participation in the training program.

(b) No order revoking any special certificate shall take effect until the expiration of the time allowed for reconsideration under section 12-20-55, and if reconsideration is requested, the effective date of the revocation order shall be postponed until action is taken thereon. If the revocation order is affirmed, the employer shall reimburse any person employed under a special certificate which has been cancelled for the difference between the minimum wage applicable under section 387-2, Hawaii Revised Statutes, and any lower wage paid that person subsequent to the revocation date indicated in the director's order. [Eff. 10/2/81] (Auth. HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-55 Reconsideration.** (a) Any person aggrieved by the director's action in denying, granting, or revoking a special student-learner certificate may, within ten-days after the director's action, file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. 0/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§§12-20-56 to 12-20-60** (Reserved)

### **SUBCHAPTER 3**

#### **EMPLOYMENT OF HANDICAPPED CLIENTS IN SHELTERED WORKSHOPS**

**Historical Note:** Subchapter 3, chapter 20 of title 12 is based substantially upon "Rule XXIV, Relating to Employment of Handicapped Clients in Sheltered Workshops" of the Department of Labor and Industrial Relations. [Eff. 10/24/59; R 10/2/81]

**§12-20-61 Definitions.** As used in this subchapter:

"Handicapped client" or "client" means an individual whose employability is impaired by age, physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of that agency or in or about the home of a client.

"Sheltered workshop" or "workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for

individuals whose employability is impaired by age, physical or mental deficiency or injury, and of providing these individuals with remunerative employment or other occupational rehabilitative activity of an educational or therapeutic nature. [Eff. 10/2/81] (Auth: HRS §§397-9, 387-11) (Imp: HRS §387-9)

**§12-20-62 Application for certificate.** (a) Application for a special certificate may be made by a sheltered workshop to the director permitting the payment of wages lower than the minimum wage required under section 387-2, Hawaii Revised Statutes, to handicapped clients.

(b) The application shall be signed by an authorized official of the workshop and shall include the following:

- (1) A description of the types of handicapped clients accepted by the sheltered workshop;
- (2) A description of the types of work and the rehabilitation services offered by the workshop; and
- (3) The estimated earnings of each handicapped client who is unable to earn the minimum wage required under section 387-2, Hawaii Revised Statutes. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-63 Factors for consideration.** The following factors may be considered by the director or authorized departmental representative in determining the necessity of issuing a special certificate and the conditions to be specified therein:

- (1) The present and previous earnings of handicapped clients of the workshop;
- (2) The general nature and extent of the handicaps of clients served by the workshop;
- (3) The wages of non-handicapped employees employed in private industry engaged in work comparable to that performed in the workshop;
- (4) The cost, value, duration, and types of rehabilitative, medical, educational, therapeutic, and social work services given to handicapped clients;
- (5) The tuition, fees, or other charges made by agencies other than workshops for similar types of services;
- (6) The extent to which handicapped clients, other individuals, governmental agencies, or other organizations may pay dues, fees, or other monies to the workshop;
- (7) The extent to which clients share, through services or wages, in the receipts for work done in the workshop;
- (8) The extent to which the handicapped clients may also be learners or otherwise inexperienced; and
- (9) Whether there exists any workshop-customer arrangement which constitutes an unfair method of competition and

which tends to spread or perpetuate substandard wage levels. (Eff. 10/2/81] (Auth: HRS §§337-9, 387-11) (Imp: HRS §387-9)

**§12-20-64 Issuance of certificate.** (a) If the application and other available information indicate that the applicant is a sheltered workshop and that the clients of the workshop are paid commensurate with their productivity at the prevailing rates in the vicinity in regular commercial industry Maintaining approved labor standards for the type of work being performed, the director, to the extent necessary in order to prevent curtailment of opportunities for employment, shall issue a special certificate authorizing the employment of handicapped clients under the terms and conditions set forth therein, at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. Otherwise the director shall deny a special certificate.

(b) A special certificate may be issued for an individual handicapped client, a division of the workshop, the entire workshop, or any combination thereof. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-65 Terms of certificate.** (a) The special certificate shall:

- (1) Specify the terms and conditions under which it is granted; and
  - (2) Be effective for a period to be designated by the director. The special minimum wage rates may be paid only during the effective period of the certificate.
- (b) The special certificate may provide the following rates:
- (1) A special minimum wage rate which may be paid during a specified period or periods, designated as "training-periods", to allow for evaluation of the client's capacities and for job-training. The rate may apply during the specified training periods to a client who has never previously worked in the workshop, or to a client who is transferred to a job in the workshop at which the client has never previously worked, or to a client who has returned to the workshop after a period of separation and who would require retraining; and
  - (2) A special minimum wage rate for the workshop or for divisions of the workshop which may be paid to a client following completion of the specified training periods, unless a lower special individual wage rate has been authorized in the special certificate for a client who is unable to earn the workshop or applicable division minimum wage rate.
- (c) The wage rates paid clients working at piece rates shall

not be less than the piece rates paid non-handicapped employees performing the same work in the vicinity in a regular commercial industry maintaining approved labor standards. The wage rates paid clients working at time rates shall be based on the prevailing rates in the vicinity in a regular commercial industry maintaining approved labor standards, taking into account the type, quality, and quantity of work produced by the client, In no instance shall wage rates be less than the minimum rate specified in the special certificate as provided in subsection (b)(1).and (2).

(d) Clients of the workshop shall be paid not less than one and one-half times the regular rate for all hours over forty worked in the workweek, as provided in section 387-3, Hawaii Revised Statutes.

(e) The terms of any special certificate may. be amended upon request of the sheltered workshop or handicapped client or by the director. [Eff. 10/2/81] (Auth: HRS §§387-9, 337-11) (Imp: HRS §387-9)

**§12-20-66 Renewal of certificate.** (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Handicapped clients may be paid subminimum wages after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-70; provided that if the denial is affirmed on review, the sheltered workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date as of which the renewal of the special certificate was denied. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: §387-9)

**§12-20-67 Non-handicapped client's in sheltered workshops.** No individual who is not a handicapped client shall be employed under any special certificate issued pursuant to this subchapter at wages lower than the minimum required under section 387-2, Hawaii Revised Statutes. [Eff. 10/2/81] (Auth. HRS §§387-9, 387-11) (Imp: HRS §§387-2, 387-9)

**§12-20-68 Record keeping requirement.** Every sheltered workshop at all times shall keep, maintain, and have available for inspection by the director or an authorized departmental representative a record of the nature of each client's handicap in addition to the records required under section 12-20-8. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp. HRS §§387-6, 387-9)

**§12-20-69 Revocation and cancellation.** (a) The director may revoke or cancel any special certificate for cause. A special certificate may be cancelled:

- (1) As of the date of issue, if it is found that fraud has been exercised in obtaining the special certificate or in permitting a handicapped client to work thereunder; or
- (2) As of the date of violation, if it is found that any of the provisions of chapter 387, Hawaii Revised Statutes, or of the terms of the special certificate have been violated; or
- (3) As of the date of notice of revocation or cancellation, if it is found that the special certificate is no longer necessary in order to prevent curtailment of opportunities for employment, or that the requirements of this subchapter have not been complied with.

(b) Except in cases of wilful violations or those in which the public interest requires otherwise, before any special certificate is revoked or cancelled, facts or conduct which may warrant that action shall be called to the attention of the sheltered workshop in writing and it shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-70 Reconsideration.** (a) Within thirty days after mailing or delivery of notice of decision made pursuant to sections 12-20-64, 12-20-66, and 12-20-69 to the party entitled thereto, the director, upon application of any interested party, may reconsider the decision.

(b) If an application for reconsideration is made, the cancellation shall be postponed until action is taken thereon; provided that if the revocation or cancellation order is affirmed on review, the workshop shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date on which the special certificate was revoked or cancelled. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HR §387-9)

**§12-20-71 Submission of information; investigations; hearings.** The director may require at any time the submission of information other than that specified elsewhere in this subchapter as is appropriate or may conduct an investigation, which may include a hearing, prior to taking any action pursuant to this subchapter. To the extent the director deems appropriate, all interested parties may be provided an opportunity to present data and views. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§§12-20-72 to 12-20-80** (Reserved)

## SUBCHAPTER 4

### EMPLOYMENT OF STUDENT-WORKERS

**Historical Note:** Subchapter 4, chapter 20 of title 12 is based substantially upon "Regulation XXVII, Relating to Employment of Student-Workers" of the Department of Labor and Industrial Relations. [Eff. 9/4/62; am 1/1/64; am 9/1/69; R 10/3/81]

**§12-20-81 Definitions.** As used in this subchapter:

"Attending... school" means all of that period commencing with the first day the individual is required to attend classes at the school and ending with the day all of the courses or subjects of study for which the individual has registered for the term, semester, or school year, as the case may be, are completed or terminated, or the individual's status as a student is terminated.

"Full-time student" means an individual who has not attained the age of nineteen and who is considered a regular full-time student by the school at which the individual is enrolled or registered

"Part-time employee" means an individual who works less than the customary full-time hours worked by a regular full-time employee of the establishment, plant, factory, or other premises at which the individual is employed, and, except as otherwise provided herein, whose hours of work at the establishment, plant, factory, or other premises at which the individual is employed do not exceed:

- (1) Four hours on a school day;
- (2) Eight hours on a Saturday, Sunday, or on a holiday observed by the school at which the individual is a student; and
- (3) Twenty-five hours in a workweek.

Any provision to the contrary notwithstanding, an individual shall be deemed a "part-time employee" during Christmas and Spring vacations observed by the school at which that individual is a student if during those vacations the individual's hours of work performed for any one employer do not exceed eight hours in a day and forty hours in a workweek.

"Student-worker" means a part-time employee who is a full-time student attending a public or private school other than a college, university, business school, or technical school. [Eff. 10/2/81]  
(Auth: HRS §§387-9, 387-11) (Imp: HRS 387-9)

**§12-20-82 Application for certificate.** (a) Application for the employment of student-workers under special certificates authorizing employment at wages lower than the minimum wage applicable under section 387-2, Hawaii Revised Statutes, shall be made by the employer on forms furnished by the department. The application must be complete and be signed by the employer, the



student-worker, and a parent or guardian of the student-worker.

(b) The employer shall also obtain a statement from the principal or an authorized official of the school that the student-worker is a full-time day student of that school, and the statement shall be presented to the director with the application for a special certificate. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-83 Issuance of certificate.** Upon the receipt of an application for the- employment of a student-worker, the director may issue a special certificate to the employer under the following terms and conditions:

- (1) The special minimum wage shall be not less than eighty-five per cent of the minimum wage under section 387-2, Hawaii Revised Statutes, or as the same -may be amended from time to time;
- (2) Hours or other conditions of employment are not detrimental to the health, safety, or morals of the student-worker;
- (3) The special certificate shall be valid under the terms set forth in the certificate for a period of not more than twelve months from the date of issue as specified in the certificate; and
- (4) The employer shall keep the special certificate on file while the student-worker is employed, and upon termination of employment, the certificate shall be returned to the director. [Eff. 10/2/81] (Auth. HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-84 Record keeping requirements.** In addition to records required by section 12-20-8 and by chapter 387, Hawaii Revised Statutes, the employer's records shall identify each student-worker. [Eff. 10/2/81] (Auth: HRS §§387-9, 397-11) (Imp: HRS §387-9)

**§12-20-85 Revocation and cancellation.** Any special certificate may be revoked or cancelled for cause at any time by the director after affording all interested parties an opportunity for a hearing. Cause shall mean violation of this subchapter or any provision of chapters 387 or 388, Hawaii Revised Statutes, or a finding by the director that the hours or other conditions of employment are detrimental to the health, safety, or morals of the student-worker. [Eff: 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS 387-9)

**§12-20-86 Reconsideration.** (a) Any person aggrieved by the director's action in denying, granting, or revoking a special student-worker certificate, within ten days after that action, may file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the

applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS 387-9)

**§§12-20-87 to 12-20-90** (Reserved)

## **SUBCHAPTER 5**

### **EMPLOYMENT OF HANDICAPPED PERSONS**

**Historical Note:** Subchapter 5, chapter 20 of. title 12 is based substantially upon "Regulation XXVIII, Relating to Employment of Handicapped Persons" of the Department of Labor and Industrial Relations. [Eff. 9/1/63; R 10/2/81]

**§12-20-91 Definitions.** As used in this subchapter:

"Handicapped trainee" or "trainee" means an individual whose employability is impaired by age, physical or mental deficiency, or injury and who is receiving or is to receive on-the-job training in industry under vocational rehabilitation programs administered by any governmental agency.

"Handicapped worker" or "worker" means an individual whose employability is impaired by age, physical or mental deficiency, or injury. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-92 Application for certificate.** Application for the employment of handicapped workers and handicapped trainees under special certificates authorizing employment at wages lower than the minimum-wage under section 387-2, Hawaii Revised Statutes, shall be made by the employer to the director on forms furnished by the department.

- (1) The application for-a handicapped worker certificate must be complete and be signed by the employer and the handicapped worker or guardian.
- (2) The application for a handicapped trainee certificate must be complete and be signed by the employer, the handicapped trainee or guardian, and a representative of the governmental agency. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-93 Issuance of certificate.** Upon receipt of an application for employment of a handicapped worker or handicapped trainee, the director may issue a special certificate to the employer-under the following terms and conditions:

- (1) The special certificate shall be valid under the terms set forth in the certificate for a period of not more than

- twelve months from the date of issue as specified in the certificate;
- (2) The special certificate shall have no retroactive effect, but shall operate as an exception subsequent to the date of issue only;
  - (3) The subminimum wage shall not be less than the wage specified in the certificate by the director;
  - (4) The handicapped worker or handicapped trainee shall be paid at the hourly rate specified in the certificate, or not less than the piece rates paid non-handicapped workers employed in the same occupation, whichever is greater;
  - (5) The handicapped worker or handicapped trainee shall be paid not less than one and one-half times the regular rate for all hours worked in excess of the maximum workweek under section 387-3, Hawaii Revised Statutes;
  - (6) Money paid the handicapped trainee by any governmental agency for maintenance or other expenses shall not be considered as off-setting any part of the wage or other remuneration due the handicapped trainee by the employer; and
  - (7) The terms of any special certificate may be amended for cause upon written request to the director by the parties concerned. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-94 Renewal of certificate.** (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Handicapped workers and handicapped trainees may be paid a subminimum wage after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-97; provided that if the denial is affirmed on review, the employer shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage paid that person subsequent to the date on which the renewal of the certificate was denied. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp. HRS §387-9)

**§12-20-95 Record keeping requirements.** In addition to records required by section 12-20-8 and chapter 387, Hawaii Revised Statutes, the employer's records shall identify each handicapped worker or handicapped trainee. (Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-96 Revocation and cancellation.** (a) Any special certificate may be revoked or cancelled for cause at any time by the director-after affording all interested parties an opportunity for a hearing. Cause shall mean violation of this subchapter or any applicable provision of chapters 387 or 388, Hawaii Revised Statutes, or a finding by the director that fraud has been exercised in obtaining the special certificate or in permitting a handicapped employee to work thereunder.

(b) Except in cases of wilful violations or those in which the public interest requires otherwise, before any special certificate is revoked or cancelled, facts or conduct which may warrant that action shall be called to the attention of the employer in writing and the employer shall be afforded an opportunity to demonstrate or achieve compliance with all lawful requirements. (Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-97 Reconsideration.** (a) Any person aggrieved by the director's action in denying, granting, revoking, or cancelling a special certificate may, within ten days after that action, file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the Applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§§12-20-98 to 12-20-100 (Reserved)**

## **SUBCHAPTER 6**

### **EMPLOYMENT OF PAROLED WARDS OF THE HAWAII YOUTH CORRECTIONAL FACILITY**

**Historical Note:** Subchapter 6, chapter 20 of title 12 is based substantially upon "Regulation XXIX, Relating to Employment of Paroled Wards of the Hawaii Youth Correctional Facility" of the Department of Labor and Industrial Relations. [Eff. 9/1/63; R 10/2/81]

**§12-20-101 Definitions.** As used in this sub-chapter:  
"Paroled ward" means any individual between fifteen and eighteen years of age who:

- (1) Has been committed to the Hawaii youth correctional facility by the courts of the State of Hawaii for the period of the individual's minority but subject to earlier

- release on parole;
- (2) Has met the parole requirement of the department of social services and housing; and
  - (3) Is employed pursuant to a rehabilitation program of the department of social services and housing. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-102 Application for certificate.** Application for the employment of paroled wards under special certificates authorizing employment at wages lower than the minimum wage under section 387-2, Hawaii Revised Statutes, shall be made by the employer to the director on forms furnished by the enforcement division of the department. The application must be complete and be signed by the employer, the paroled ward, and an appropriate official of the department of social services and housing. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-103 Issuance of certificate.** Upon receipt of an application for the employment of a paroled ward, the director may issue a special certificate to the employer subject to the following terms and conditions:

- (1) The wage rate set in the certificate shall be fixed at a figure designed to reflect adequately the individual worker's earning capacity. No wage rate shall be fixed at less than fifty per cent of the minimum wage under section 387-2, Hawaii Revised Statutes;
- (2) The paroled ward shall be paid at the hourly rate specified in the certificate, or not less than the piece rates paid to employees in the same occupation, whichever is greater;
- (3) The paroled ward shall be paid not less than one and one-half times the regular rate for all hours worked in excess of the maximum workweek under section 387-3, Hawaii Revised Statutes;
- (4) A special certificate shall be valid under the terms set forth in the certificate for a period of not more than six months from the date of issue or a longer period if specified in the certificate; and
- (5) The employer shall keep the special certificate on file while the paroled ward is employed, and upon termination of employment, the certificate shall be returned to the director. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-104 Renewal of certificate.** (a) Application may be filed for renewal of any special certificate.

(b) If an application for renewal has been properly filed prior to the expiration date of a special certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

(c) Paroled wards may be paid a subminimum wage after notice that the application for renewal has been denied, if review of the denial is requested in accordance with section 12-20-107; provided that if the denial is affirmed on review, the employer shall reimburse any person covered by the special certificate for the difference between the applicable minimum wage and any lower wage-paid that person subsequent to the date on which the renewal of the certificate was denied. (Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-105 Record keeping requirements.** In addition to records required by section 12-20-8 and by chapter 387, Hawaii Revised Statutes, the employer's records shall identify each paroled ward. (Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-106 Revocation and cancellation.** Any special certificate may be revoked or cancelled for cause at any time by the director after affording all interested parties an opportunity for a hearing. Cause shall mean violation of this subchapter or any applicable provision of chapters 387 or 388, Hawaii Revised Statutes, or a finding by the director that the conditions of employment are detrimental to the health, safety, or morals of the paroled ward. [Eff. 10/2/81] (Auth: HRS §§387-9, 387-11) (Imp: HRS §387-9)

**§12-20-107 Reconsideration.** (a) Any person aggrieved by the director's action in denying, granting, revoking or cancelling a special certificate may, within ten days after that action, file a written request for reconsideration by the director.

(b) A request for reconsideration shall be granted where the applicant shows that there is additional evidence which may materially affect the decision and that there were reasonable grounds for failure to offer that evidence prior to the director's action. [Eff. 10/2/81] (Auth: HRS §§387-9, 337-11) (Imp: HRS 387-9)